

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JASON SANDERS,

Plaintiff,

v.

TODD W. COWELL and NATHAN BIRKNER,

Defendants.

Case No. 13-cv-258-JPG-SCW

**MEMORANDUM AND ORDER**

This matter comes before the Court on the motion for voluntary dismissal without prejudice (Doc. 66) filed by plaintiff Jason Sanders. The Court construes this as a motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) as to defendant Todd W. Cowell and a notice of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) as to defendant Nathan Birkner.

Rule 41(a)(2) provides that only the Court may dismiss an action after an adverse party has filed an answer or motion for summary judgment and in the absence of a stipulation of dismissal of an entire case signed by all the parties. The Court has reviewed the file and finds that dismissal of the claims against Cowell is warranted. Accordingly, it **GRANTS** the motion (Doc. 66) as to Cowell and **DISMISSES** the claims against Cowell **without prejudice**.

Rule 41(a)(1)(A)(i) allows a plaintiff to dismiss an action without a court order at any time before the opposing party serves an answer or a motion for summary judgment. Birkner has not served an answer or motion for summary judgment in this case. Because the plaintiff has an absolute right to dismiss his claims against Birkner at the present time, the Court finds that those claims are **DISMISSED without prejudice**.

In light of the foregoing, the Court **DIRECTS** the Clerk of Court to close this case.

**IT IS SO ORDERED.**

**DATED: January 6, 2014**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**